



DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice 11299]

RIN 1400-AF10

Passports: Form DS-3053 Statement of Consent; Consular Reports of Birth Abroad (CRBA)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend its rule regarding minor passport applications to allow a non-applying parent to sign the statement of consent before a notary public *or* a passport specialist at one of the public passport agency/center counters located within the United States. Department of State Form DS-3053, which is used to obtain the written consent from the parent or legal guardian of a minor passport applicant when they cannot be present at the time the application is executed, is being revised to be consistent with this rulemaking. This proposal also amends the rule by removing from the list of acceptable documentary evidence of sole authority/custody a Consular Report of Birth Abroad (CRBA) listing only the applying parent. Finally, this rulemaking updates the authority citation for the regulations.

DATES: The Department of State will accept comments until [INSERT DATE **60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- Visit the Regulations.gov website at: <https://www.regulations.gov> and search for the docket number DOS-2021-0001.
- Email: PassportOfficeofAdjudicationGeneral@state.gov. You must include RIN 1400-AF10 in the subject line of your message.

- All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a Final Rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Kelly Cullum, Office of Adjudication, Passport Services, (202) 485-8800, or email PassportOfficeofAdjudicationGeneral@state.gov.

SUPPLEMENTARY INFORMATION: When applying for a U.S. passport on behalf of a minor under the age of 16, the minor's parents or legal guardians must both execute the passport application, unless the applying parent can demonstrate sole authority to obtain the passport. Currently, if one of the parents or legal guardians does not execute the passport application, the non-applying parent must submit a notarized statement/affidavit consenting to the issuance of a passport for the minor, along with a copy of the parent's identification. Feedback from parents and legal guardians indicates that the notarization of the document can be a difficult requirement to meet and adds more time and expense to the application process. Additionally, when the non-applying parent appears at a passport agency/center counter to complete the statement of consent, they must be turned away and sent to a notary public.

The Department proposes to amend 22 CFR 51.28(a)(3)(i) and (a)(4)(i) and (ii) to allow the non-applying parent or legal guardian to sign a statement of consent before a passport specialist at one of the public passport agency/center counters located within the United States as an alternative to signing it before a notary public when an application is pending at a passport agency/center or overseas post. This counter service will be offered free of charge. This proposal further amends § 51.28(a)(4)(ii) to clarify that where one parent authorizes a person to apply in loco parentis on behalf of a minor, they must demonstrate that they have sole legal

authority to execute the passport application on behalf of that minor or that exigent or special family circumstances exist.

This proposal also amends 22 CFR 51.28(a)(3)(ii) by removing from the list of acceptable documentary evidence of sole authority/custody a Consular Report of Birth Abroad (CRBA) listing only the applying parent, because a CRBA is a citizenship document and not by itself evidence of sole authority/custody.

REGULATORY FINDINGS:

Administrative Procedure Act

The Department of State is publishing this rulemaking as a proposed rule and is providing 60 days for public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. This gives greater flexibility to the parents and legal guardians of minor children applying for U.S. passports. Only individuals, and no small entities, apply for passports.

Unfunded Mandates Act of 1995

This rulemaking will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 12866

This proposed rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department does not anticipate that demand for passport services will change as a result of this rule change. The service described in this rulemaking will be offered free of charge.

The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive order. The Department finds that the cost of this rulemaking to the public is expected to be minimal, and in fact provides a potential benefit to non-applying parents who may now sign a consent statement before a passport specialist free of charge (while retaining the option of signing before a notary).

Executive Order 13563—Improving Regulation and Regulatory Review

The Department of State has considered this proposed rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Orders 12372 and 13132 - Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175 – Consultation with Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of E.O. 13175 do not apply to this proposed rule.

Paperwork Reduction Act

The information collection contained in this proposed rule is pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, and relates to Office of Management and Budget (OMB) Control Number 1405-0129. As part of this rulemaking, the Department is seeking comment on the administrative burden associated with this collection of information. This proposed rule will

result in a change in the design of the DS-3053, the form associated with this collection of information.

Department of State Form DS-3053, which is used to obtain the written consent from the parent or legal guardian of a minor passport applicant when they cannot be present at the time the application is executed, is being revised to be consistent with this rulemaking, to allow the non-applying parent or legal guardian to sign a statement of consent before a notary public *or* a passport specialist at one of the public passport agency/center counters located within the United States as an alternative to requiring a notarized statement when an application is pending at a passport agency/center.

OMB Control No. 1405-0129, Statement of Consent: Issuance of a U.S. Passport to a Minor Under the Age 16 was last revised on December 15, 2020. The estimated burden is 20 minutes. The Department does not anticipate an increase in burden; however, in addition to comments on the proposed rule itself, the public is invited to comment on the estimated burden.

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Non-Applying Parents of Minor Passport Applicants Execution of Form DS-3053 Statement of Consent.

(3) *Agency form numbers:* DS-3053 Statement of Consent.

(4) *Affected public:* This information collection will be used by non-applying parents of minor passport applicants.

(5) *An estimate of the total number of respondents:* The Department estimates that the yearly total of respondents age 17 and under is 416,478.

(6) *An estimate of the total annual public burden (in hours) associated with the collection:* The average burden associated with the DS-3053 Statement of Consent information collection is estimated to be 20 minutes per respondent. The Department estimates the total annual burden for this information collection to be 138,826 hours.

(7) *Submit comments to the Department of State by the following methods:*

Department of State:

- *Web:* Persons with access to the Internet may view this document and provide comments by going to the regulations.gov website at: <https://www.regulations.gov/index.cfm>. Search for Docket No. DOS-2021-0001 or for RIN 1400-AF10.
- *E-mail: PassportOfficeofAdjudicationGeneral@state.gov:* You must include the DS form number, information collection title, and the OMB control number in any correspondence.

(8) We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this proposed rule are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

This information collection will enable non-applying parents to provide consent to passport issuance to minor applicants before a notary public (current rule) or before either a notary public or a counter passport specialist (proposed rule).

Methodology:

The form introduced by this information collection will be made available online on the Department's website and upon request at participating passport agencies and must be submitted to the Department as noted in this rulemaking.

List of Subjects in 22 CFR Part 51

Passports.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 51 is proposed to be amended as follows:

PART 51 – PASSPORTS

1. The authority citation for part 51 is revised to read as follows:

Authority: 8 U.S.C. 1104, 1185, 1185n (Pub. L. 108-458, 118 Stat. 3638, 3823), 1504, and 1714; 22 U.S.C. 211a, 212, 212a, 212b, 213, 213n (Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], Pub. L. 106-113, 113 Stat. 1536, 1501A-430), 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2714a, 2721, and 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 34 U.S.C. 21501-21510; 42 U.S.C. 652(k); E.O. 11295, 31 FR 10603, 3 CFR, 1966-1970 Comp., p. 570; 34 U.S.C. 21501-21510; 26 CFR 301.6039E-1.

2. Amend § 51.28 by:

- a. Revising paragraph (a)(3)(i);
- b. Removing paragraph (a)(3)(ii)(B);
- c. Redesignating paragraphs (a)(3)(ii)(C) through (G) as paragraphs (a)(3)(ii)(B) through (F);
- d. In newly redesignated paragraph (a)(3)(ii)(E), removing the period and adding “; and” in its place; and
- e. Revising paragraphs (a)(4)(i) and (ii).

The revisions read as follows:

§ 51.28 Minors.

(a) * * *

(3) * * *

- (i) A written statement or affidavit from the non-applying parent or legal guardian, if applicable, consenting to the issuance of the passport, and signed before a notary public or a passport specialist at a public passport agency/center counter operated by the Department of State.

* * * * *

(4) * * *

(i) A person may apply in loco parentis on behalf of a minor under age 16 by submitting a written statement or affidavit from both parents or each legal guardian, if any, specifically authorizing the application, and signed before a notary public or a passport specialist at a public passport agency/center counter operated by the Department of State.

(ii) If only one parent or legal guardian provides the written statement or affidavit, the applicant must provide documentary evidence that an application may be made by one parent or legal guardian, consistent with this section.

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Billing Code 4710-25

[FR Doc. 2022-22758 Filed: 10/19/2022 8:45 am; Publication Date: 10/20/2022]